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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 UNITED STATES OF AMERICA

5 v.
6 TODD CAPSER

19 CR 337 (JPO)
Plea

7 Defendant
8 -----x

9
10 New York, N.Y.
11 July 2, 2019
12 10:00 a.m.

13 Before:

14 HON. J. PAUL OETKEN
15 District Judge

16 APPEARANCES

17
18 GEOFFREY S. BERMAN
19 United States Attorney for the
20 Southern District of New York
21 SAM ROTCHILD
22 BEN SCHRIER
23 Assistant United States Attorney

24
25 FEDERAL DEFENDERS OF NEW YORK INC.
26 Attorney for Defendant
27 PHILIP L. WEINSTEIN

28 ALSO PRESENT: Rachael Cartwright, FBI

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1 (Case called)

2 DEPUTY CLERK: Counsel, please state your names for
3 the record.

4 MR. ROTHCCHILD: Good morning, your Honor.

5 Sam Rothchild and Ben Schrier for the government.
6 We're joined at counsel table by Special Agent Rachael
7 Cartwright of the FBI.

8 THE COURT: Good morning.

9 MR. WEINSTEIN: Phil Weinstein, Federal Defenders on
10 behalf of Mr. Capser.

11 THE COURT: Good morning.

12 Mr. Capser, I've been informed that you wish to plead
13 guilty to Count Two of the indictment which charges wire fraud
14 pursuant to a plea agreement. Is that correct?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Before accepting your guilty plea, I'm
17 going to ask you a number of questions, and that's just so that
18 I can establish that you're pleading guilty because you are
19 guilty and not because of any undue pressure or anything else.20 If you don't understand any of my questions or if at
21 any point you want to take a break to speak further with your
22 lawyer, please let me know. All right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You'll now be placed under oath.

25 (Defendant sworn)

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1 THE COURT: Mr. Capser, you're now under oath, and
2 that means if you answer any of my questions falsely, you could
3 be prosecuted for perjury for those answers.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: What's your full name?

7 THE DEFENDANT: Todd Michael Capser.

8 THE COURT: How old are you, sir?

9 THE DEFENDANT: I'm 47.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: Just under a bachelor degree, four
12 years, but I didn't get the actual degree.

13 THE COURT: Where was that?

14 THE DEFENDANT: Virginia Military Institute and the
15 college of Great Falls in Montana.

16 THE COURT: Have you ever been treated or hospitalized
17 for any mental illness?

18 THE DEFENDANT: I have not, no.

19 THE COURT: Are you now or have you recently been
20 under the care of a psychiatrist or a doctor?

21 THE DEFENDANT: No. I go to my weekly court ordered
22 counseling therapy session.

23 THE COURT: Have you ever been hospitalized or treated
24 for addiction to drugs or alcohol?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: In the past 24 hours, have you taken any
2 medicine or pills or had any alcohol?

3 THE DEFENDANT: No, I have not, your Honor.

4 THE COURT: Are you taking any medication on a daily
5 basis?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: And is your mind clear today?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And you understand what's happening in
10 this proceeding?

11 THE DEFENDANT: I do, yes.

12 THE COURT: Does either counsel have any doubt as to
13 the defendant's competence to plead at this time?

14 MR. ROTHCCHILD: No, your Honor.

15 MR. WEINSTEIN: No, your Honor.

16 THE COURT: Based on his responses to my questions and
17 his demeanor as I observe it, I find that the defendant is
18 competent to enter a guilty plea.

19 Mr. Capser, let me ask you whether you've had a
20 sufficient opportunity to discuss your case with your lawyer?

21 THE DEFENDANT: I have, your Honor.

22 THE COURT: Does that include having a sufficient
23 amount of time and opportunity to discuss the specific charge
24 you intend to plead to, as well as any defenses and the
25 consequences of pleading guilty?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Are you satisfied with your attorney's
3 representation of you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I'm now going to explain certain
6 constitutional rights, and the reason for that is these are
7 rights that you give up when you plead guilty. So I want to
8 make sure you understand them.

9 Under the Constitution and laws of the United States,
10 you are entitled to a speedy and public trial by a jury on the
11 charges in the indictment. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: At that trial, you would be presumed
14 innocent, and the government would be required to prove you
15 guilty beyond a reasonable doubt by competent evidence before
16 you could be found guilty. You would not have the burden of
17 proving you're innocent, but a jury of 12 people would have to
18 agree unanimously that you were guilty beyond a reasonable
19 doubt. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: At that trial, and at every stage of your
22 case, you'd have the right to be represented by a lawyer; and
23 if you could not afford one, one would be appointed to
24 represent you at all those stages of the case. Do you
25 understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: During a trial, the witnesses for the
3 government would have to come to court and testify in your
4 presence, and your lawyer would be able to cross-examine the
5 witnesses for the government, object to evidence offered by the
6 government, and issue subpoenas and offer evidence and compel
7 witnesses to testify in your defense. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: At a trial, although you'd have the right
10 to testify if you chose to, you would also have the right not
11 to testify, and no inference or suggestion of guilt could be
12 drawn from the fact that you did not testify if that's what you
13 chose. Do you understand?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Also, if you were convicted at a trial,
16 you'd have the right to appeal that verdict to the Court of
17 Appeals. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Even at this time as you're entering this
20 plea, you do have the right to change your mind and continue to
21 plead not guilty and have a trial on the charges in the
22 indictment. Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And if you plead guilty and I accept your
25 plea, you'll be giving up your right to a trial and the other

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1 rights I just described. There will be no trial, but, rather,
2 I will enter a judgment of guilty on the one count referred to
3 in the plea agreement, and then that becomes a conviction on
4 that count, and I will sentence you on the basis of that guilty
5 plea, which, as I said, is a conviction.

6 I won't sentence you today, but I will sentence you on
7 a date to be set a few months from now, and I will do that only
8 after considering any written submissions from the parties as
9 well as a presentence report that the probation department will
10 prepare. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If you plead guilty, you'll have to give
13 up your right not to incriminate yourself because I will ask
14 you questions about what you did just to satisfy myself that
15 you are in fact guilty. Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You previously received a copy of the
18 indictment containing the charges in this case. Is that right?

19 THE DEFENDANT: Yes.

20 THE COURT: And you understand the nature of those
21 charges?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: All right. Mr. Rothchild, would the
24 government like to state the elements of the offense?

25 MR. ROTHCHILD: Yes, your Honor.

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1 THE COURT: Which is Count Two, the one that he's
2 pleading to in the agreement.

3 MR. ROTHCCHILD: That's correct. That's the wire fraud
4 count. There are three elements of that count:

5 One, that the defendant devised a scheme to defraud or
6 to obtain money or property by materially false or fraudulent
7 pretenses, representations, or promises or willfully
8 participated in such a scheme with knowledge of its fraudulent
9 nature;

10 Two, that the defendant acted with the intent to
11 defraud;

12 And, three, that in advancing, furthering, or carrying
13 out the scheme, the defendant transmitted any writing, signal
14 or sound by means of a wire, radio, or television communication
15 in interstate commerce or caused the transmission of any
16 writing, signal, or sound of some kind by means of a wire,
17 radio, or television communication in interstate commerce.

18 THE COURT: Thank you.

19 I want to explain the maximum possible penalty for
20 this offense. Under the statute, there's a maximum of 20
21 years' imprisonment. There's a maximum fine of the greatest of
22 \$250,000, or two times the total gain from the offense to you
23 or two times the total loss to others from the offense. And
24 there's a \$100 special assessment which is mandatory.

25 There's also a maximum term of supervised release of

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1 three years. Supervised release means essentially like
2 probation; that you're subject to monitoring following any
3 release from imprisonment. And there are terms of supervised
4 release that you must comply with, and if you fail to comply
5 with them, you can be returned to prison without a jury trial.

6 Also, as part of the plea agreement, you admit the
7 forfeiture allegation with respect to Count Two and agree to
8 forfeit to the United States a sum equal to \$43.3 million in
9 United States currency representing any and all property
10 derived from proceeds traceable to the offense, and also as
11 part of the plea agreement pursuant to my authority at
12 sentencing there will be restitution ordered to victims also in
13 the amount of \$43.3 million.

14 Are you a United States citizen?

15 THE DEFENDANT: Yes, I am, your Honor.

16 THE COURT: I also want to explain that if your
17 attorney or anyone has attempted to predict what your sentence
18 will be, that I'm the one who's going to determine your
19 sentence. So any prediction is not necessarily certain or
20 true. I'm only going to decide after considering the
21 submissions I described, including a presentence report,
22 consider the Sentencing Guidelines, any departures or variances
23 from it, and ultimately determine what an appropriate sentence
24 is for you under statutory factors in the statute of 18 U.S.C.
25 Section 3553(a). And even if your sentence is different from

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1 what anyone has told you it might be or what you expect, you
2 will still be bound by your guilty plea and not be allowed to
3 withdraw your plea of guilty as to this count.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Has anyone threatened you or forced you in
7 any way to plead guilty?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: And did you sign a plea agreement today?

10 THE DEFENDANT: I did, your Honor.

11 THE COURT: I have a copy of a plea agreement with a
12 cover date of June 18 that appears to have your signature. Did
13 you sign this today?

14 THE DEFENDANT: I did, your Honor. Yes.

15 THE COURT: And did you have a chance to read the
16 agreement and discuss it with your lawyer before you signed it?

17 THE DEFENDANT: I did. Yes, sir.

18 THE COURT: Do you understand everything that's in the
19 agreement?

20 THE DEFENDANT: I do. Yes, your Honor.

21 THE COURT: Do you have any separate side agreement
22 with the government or any other understanding that's been left
23 out of this agreement?

24 THE DEFENDANT: I do not, your Honor.

25 THE COURT: All right. Under this agreement, there's

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1 what's called a stipulated guideline range of 121 months' to
2 151 months' imprisonment. That is the guideline range
3 according to the parties' agreement is 121 months' to 151
4 months' imprisonment with a guideline fine range of \$35,000 to
5 \$350,000. This stipulation is binding on the government and
6 you, but not on me, and I will make my own calculation of your
7 sentence. I don't have any reason to think that that's not the
8 appropriate guideline range, but I will be making my own
9 guideline calculation. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: The other thing I want to emphasize is
12 under the agreement, you're giving up your right to appeal or
13 challenge your sentence as long as I sentence you to no more
14 than 151 months' imprisonment. That is within or below the
15 guideline range. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Having gone through these questions, do
18 you still wish to plead guilty pursuant to this agreement?

19 THE DEFENDANT: I do, your Honor.

20 THE COURT: Would you please tell me in your own words
21 what you did that makes you believe you are guilty of the
22 charge in Count Two, the wire fraud count?

23 THE DEFENDANT: Between January 2016 and April 2019, I
24 obtained a loan from a financial institution by making false
25 representations about my ownership of assets that were

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1 collateral for the loan. Some of the relevant communications
2 were transmitted by wire and phone. At least one of the
3 transactions passed through a bank in Manhattan, New York. I
4 knew any conduct was illegal -- I knew my conduct was illegal.
5 I apologize.

6 THE COURT: You knew at the time your conduct was
7 illegal?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I will ask counsel for the government if
10 you believe that's a sufficient factual basis for the guilty
11 plea, or if you think there's any additional questioning that
12 would be warranted?

13 MR. ROTHLCHILD: Your Honor, the government would ask
14 that the defendant also allocute that the false representations
15 were about not only the defendant's assets but also the assets
16 of family members.

17 THE COURT: OK. Mr. Capser, let me just ask that
18 question, which is, were the false representations not only
19 about your assets but about you said family members' assets?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: That is accurate?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Any additional questioning you think is
24 necessary?

25 MR. ROTHLCHILD: No, your Honor.

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1 THE COURT: Let me ask defense counsel if you also
2 believe that there's a sufficient factual basis based on that
3 allocution for the guilty plea.

4 MR. WEINSTEIN: Yes.

5 THE COURT: And do you know of any reason I should not
6 permit your client to plead guilty?

7 MR. WEINSTEIN: I do not.

8 THE COURT: Mr. Capser, since you acknowledge that you
9 are in fact guilty as charged in Count Two of the indictment,
10 since I'm satisfied that you know your rights, including your
11 right to go to trial, that you are aware of the consequences of
12 your plea, including the sentence which may be imposed, I find
13 that you are voluntarily and knowingly pleading guilty, and I
14 accept your guilty plea and enter a judgment of guilty on the
15 count to which you've pleaded guilty, which is Count Two of the
16 indictment.

17 Now, I will set a date for sentencing. Normally I set
18 a date about two and a half to three months out from the
19 current date to allow sufficient time for the probation
20 department to prepare the presentence report because they do an
21 investigation in connection with that. So I'd be looking at
22 mid to late October if that's OK.

23 MR. WEINSTEIN: I have a trial starting October 15.
24 Could we do it sometime early in November?

25 THE COURT: Sure. Is that OK with the government?

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1 MR. ROTHCCHILD: Yes, your Honor.

2 THE COURT: How about Friday, November 8? Does that
3 work?

4 MR. WEINSTEIN: Yes.

5 THE COURT: It looks like we could do -- could we do
6 the morning, 11:00 a.m. that day?

7 MR. ROTHCCHILD: That works for the government, your
8 Honor.

9 THE COURT: Is that OK, Mr. Weinstein?

10 MR. WEINSTEIN: That's fine. Thank you.

11 THE COURT: Sentencing is set for November 8, 2019 at
12 11:00 a.m. in this courtroom.

13 Any written submissions on behalf of the defendant
14 would be due two weeks before that, which is October 25, and
15 the government's submissions will be due one week before that
16 date, which is November 1, 2019.

17 MR. WEINSTEIN: Your Honor, I would also ask that the
18 Court order the final probation report a week before my final
19 submission is due so at least I have that to work from.

20 THE COURT: OK. I will send that along to probation
21 so they know that date.

22 Is there any objection to the present bond to be
23 continued to the date of sentencing?

24 MR. ROTHCCHILD: No, your Honor.

25 THE COURT: Mr. Capser, all the conditions of your

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1 release will continue to the date of sentencing, and obviously
2 a violation of those conditions could have a negative effect at
3 sentencing. So please make sure you continue to comply with
4 those conditions. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you must be in the courtroom on the
7 date and time I've set for sentencing. It's a separate crime
8 if you don't show up. You understand that?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: Thank you.

11 Is there anything further?

12 MR. ROTHCCHILD: Nothing from the government.

13 MR. WEINSTEIN: No, your Honor.

14 THE COURT: Thank you. We are adjourned.

15 (Adjourned)

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